

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

VY THANG,

Petitioner,

vs.

JOHN GAY,

Respondent.

NO. CV-07-235-LRS

ORDER DISMISSING PETITION

By Order filed September 20, 2007, the court directed Mr. Thang to amend his *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. The court directed Mr. Thang to show he was entitled to relief, and to demonstrate his federal habeas petition was timely. Petitioner did not comply.

A Spokane County jury convicted Petitioner of First Degree Murder with aggravating circumstances in March 2003. Petitioner challenged this conviction on Fourth Amendment grounds, claiming an improper search of his belongings, improper seizure of his shoes and an improper warrant prompting his arrest. These claims are not cognizable under federal habeas law. See *Stone v. Powell*, 428 U.S. 465, 494 (1976).

Furthermore, Petitioner's contention that "false evidence," a coin, was introduced at trial, was insufficient to demonstrate a

1 viable habeas claim. Again, federal habeas courts are not free to  
2 reassess the fact specific credibility judgments by juries or to weigh  
3 conflicting testimony. 28 U.S.C. § 2254(d). On collateral review  
4 this Court must presume the jury resolved any questions of credibility  
5 in favor of the prosecution, despite inconsistencies in the evidence.  
6 *Jackson v. Virginia*, 443 U.S. 307, 326 (1979). Petitioner made no  
7 argument the coin, in light of all the evidence presented at trial,  
8 was determinative of his guilt.

9 Finally, Petitioner failed to demonstrate his petition was timely  
10 filed under 28 U.S.C. § 2244(d)(1). Petitioner did not comply with  
11 the directive to amend his petition and has filed nothing further in  
12 this action. Consequently, **IT IS ORDERED** the petition is **DISMISSED**  
13 **with prejudice** as untimely and because Mr. Thang is not entitled to  
14 relief in this court. See Rule 4, Rules Governing Section 2254 Cases  
15 in the United States District Courts.

16 **IT IS SO ORDERED.** The District Court Executive is directed to  
17 enter this Order, enter judgment, forward a copy to Petitioner and  
18 close the file.

19 **DATED** this 15th day of January, 2008.

21 *s/Lonny R. Suko*

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LONNY R. SUKO  
23 UNITED STATES DISTRICT JUDGE  
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